COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 48 of 2003
(Old No. 63/1990)

Union of India … **Appellant.**

Versus

Shri Bachchi Ram … **Respondent.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Heard. Delay is condoned. The appeal is admitted.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 19-03-1990, passed in M.A.C.T. Petition No. 197 of 1987, Sri Bachchi Vs. Union of India, by the Motor Accident Claims Tribunal/III Addl. District Judge, Dehradun ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs.91,100/- along with interest @ 12% per annum in favour of the claimant-respondent as against the Opposite Party-appellant. Aggrieved, Union of India (Opposite Party) has come up in appeal with the prayer for setting aside the impugned judgment and award on the ground that the claimant was hit by tractor trolley; that the witnesses examined by the claimant are not reliable and the disability of the claimant has been wrongly determined and the learned Tribunal has failed the appreciate the evidence on record.

Brief facts giving rise to the present appeal that claimant Bachchi Ram was coming on foot from Kashmiri Colony to Niranjanpur, Dehradun on 23.4.1985. When he reached near Joshi Auto Centre at about 9.15 a.m., he was hit by military vehicle driven rashly and negligently by O.P. No.2 Mala Ram of 116 Infantry Brigade, Single Company, who had tried to overtake a tractor trolley, with the result the claimant sustained injuries. Hence the claim

petition has been filed under Section 92-A of the Old Act. The Opposite Parties have contested the case by filing their written statement. O.P. Nos. 1 and 3 have filed joint written statement, while separate written statement has been filed by the O.P. No.2 Mala Ram, driver of the offending Military Truck. He has asserted that on the fateful day, he was driving Military Truck No. 79 D-39198 A. Ahead of his vehicle, a tractor trolley loaded with dry grass (hay) was going. He (O.P.No.2) blew the horn to overtake the trolley. The driver of tractor trolley turned his vehicle towards left. In the meantime, a car came from the opposite direction and the driver of tractor trolley then turned the vehicle towards right side. According to him, the claimant sustained injuries being hit by the tractor trolley. He has alleged that the claimant was himself negligent for the incident. The O.P.Nos. 1 and 3-appellant has taken the similar stand as has been taken by O.P.No.2. The learned Tribunal, on the pleadings of the parties, has framed as many as six issues in the case. Ultimately, the Tribunal after elaborately dealing with the material on record has held that the claimant has sustained injuries in the accident as a result of rash and negligent driving of the Military Truck in question by its driver. It has further been held that claimant has not contributed in the negligence. Finally, the Tribunal has awarded compensation of Rs. 91,000/- along with interest @ 12% per annum in favour of the claimant-respondent as against the appellant.

We have heard learned Senior Standing Counsel Sri V.B.S.Negi appearing on behalf of the Union of India at length and have carefully gone through the entire material on record including the impugned judgment and award.

It has been submitted on behalf of the the appellant that in the present case, the witness examined by the claimants are not trustworthy, because the P.W.1 claimant has become unconscious on the spot and the P.W.2 has admitted that he has a weak vision, therefore, the no reliance can be placed on their testimony. We have

considered the submission made on behalf of the appellant. In the present case, as many as seven witnesses in all were produced on behalf of the claimants. In addition to that few photographs have also been filed on record. P.W.2, Sangam Lal Joshi has given ocular account of the accident, was has his residence near the spot. P.W.1-claimant has stated on oath that he was hit by the Military Truck involved in the accident, which was being driven in high speed. It is true that this witness has stated that after the accident, he became unconscious, but this witness has stated that manner of accident in his cross-examination. It is not the case of the appellant that the claimant has not his memory due to the accident, therefore, it cannot be presumed that the injured witness was unable to give correct version of the accident. Moreover, the injured claimant is not inimical to the driver of the military truck or in any way interested to save the real culprit, or the driver of the Tractor trolley. From the scrutiny of the evidence of P.W.1, it comes out that the witness has given true account of the accident and his testimony is reliable. The testimony of injured-claimant Bachchi Ram has been fully corroborated by an independent eye witness, P.W.2, Sangam Lal Joshi on all material points. As against it, the appellant has examined D.W.1 Mala Ram, who is admittedly the driver of the offending truck, who has tried to support the contention of the opposite parties that the claimant sustained injuries being hit by tractor trolley and D.W. 2 Sub. Hemanand. It may be mentioned here that in the claim cases before the Tribunal, strict proof of any fact is not required. Only it has to be prima facie examined on the basis of the evidence on record whether the accident was caused due to rash and negligent driving on the part of the driver of the offending vehicle. Taking into consideration the entire testimony of witnesses of both the parties coupled with the photographs produced by the claimant before the Tribunal, we find that the balance of evidence tilts in favour of the claimants in its totality. The learned Tribunal has discussed the entire evidence on record in arriving at the conclusion that the motor accident resulting into injuries to the claimant was caused due to rash and negligent driving by the driver

Mala Ram of the offending Military Truck. We are unable to hold otherwise in this appeal, therefore, the argument advanced on behalf of the appellant is not tenable.

It has also been argued that from the record, it is not established that the speed of military truck was very high, as there is speed-breaker and a school at the place of accident. This contention is not very much material, because the only thing to be examined in the present case is whether it was due to rashness and negligence on the part of the driver of the offending military vehicle or not. Rash and negligent driving resulting into accident do not always involve high speed. In the present case, all the circumstances lead to the only conclusion that had the driver of Military Vehicle been cautious and careful in driving the vehicle and would not have tried to overtake the tractor trolley at the place of accident, the injuries to the person of the claimant would have been avoided, therefore, the negligence on the part of driver Mala Ram of the offending truck is clearly established on the record. The finding of the learned Tribunal does not call for any interference on that score.

It has been submitted by the learned Senior Standing Counsel of the Union of India that the claimant has sustained disability to the extent of 25% but the Tribunal has held the same to be 30%, therefore, the finding of the Tribunal is erroneous. This contention of the appellant is also not tenable. From a perusal of the record, it is evident that the claimant was a driver by profession. It is established on record that due to the injuries sustained be the claimant, he has been incapacitated to perform the work of a driver. It is apparent from the record that the claimant has changed his profession on account of injuries and his income has been substantially affected and reduced. If a person is incapacitated due to the injuries sustained by him to perform some skilled job, the percentage of disability is immaterial. In the present case, the claimant has been incapacitated to perform the work of driver. This fact has not been challenged by the appellant, therefore, in view of

the pronouncement of the Hon'ble Apex Court in the case of ***"Pratap Narain Singh Deo Vs. Srinivas Sabata and another" [(1976) 1 Supreme Court Cases, 289),*** wherein it has been held that ***"the injury was such a nature as to cause permanent disablement and it incapacitated him from performing all work which he was capable of performing, viz. that of a carpenter"***, therefore, we are of the view that the Tribunal has not committed any infirmity in holding that the income of the injured-claimant has been reduced to Rs. 360/- per month. Moreover, the Tribunal has not accepted the income of the claimant, i.e. Rs. 1500/- per month as stated by the employer of the claimant, rather the monthly income of the injured was determined at Rs. 1200/- per month. The Tribunal has awarded compensation of ***Rs. 91,000/-*** in all on different counts. This amount of compensation, in our view, is a just compensation to meet the ends of justice in the present case. Ultimately, we hold that the Tribunal has not committed any illegality or infirmity in the case under appeal.

No other point was urged or argued before us in this appeal.

In the result, the appeal fails on merit and is dismissed. The judgment and award under appeal is upheld. No order as to costs.

01-10-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP